

DAVID WILLINK #657426 §
v. § CIVIL ACTION NO. 6:12cv12
TODD FOXWORTH, ET AL. §

The Plaintiff David Willink, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Willink complained that TDCJ officials were deliberately indifferent to his need for safety and protection. An evidentiary hearing was conducted. Following this hearing, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed as frivolous and for failure to state a claim upon which relief may be granted. The Magistrate Judge also noted that Willink had filed at least three previous lawsuits or appeals which had been dismissed as frivolous or for failure to state a claim upon which relief could be granted,¹ barring Willink from proceeding *in forma pauperis*.

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unless he showed that he was in imminent danger of serious physical injury as of the time of the filing of the lawsuit; the Magistrate Judge concluded that Willink failed to make such a showing.

Willink received a copy of the Magistrate Judge's Report on March 5, 2013, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 24) is hereby ADOPTED as the opinion of the District Court. It is further


ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and for failure to state a claim upon which relief may be granted. 28 U.S.C. §1915A(b). It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED. Finally, it is

ORDERED that the Clerk shall send a copy of this order to the Administrator of the Strikes List for the Eastern District of Texas.

It is SO ORDERED.

SIGNED this 10th day of April, 2013.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE